

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S. BANK NATIONAL ASSOCIATION
(Successor To The Connecticut National
Bank), Not in its Individual Capacity but
Solely As Owner Trustee Under Certain Trust
Agreements,

Plaintiff,

-against-

SOUTHWEST AIRLINES CO.,

Defendant.

ECF CASE

Case No. 07 CIV 11131 (DLC)

**SOUTHWEST AIRLINES
CO.'S ANSWER TO
PLAINTIFF'S AMENDED
COMPLAINT**

Defendant Southwest Airlines Co. ("Southwest") hereby answers the Amended Complaint of Plaintiff U.S. Bank National Association ("U.S. Bank") on personal knowledge with respect to its own acts and upon information and belief with respect to all others, and asserts the affirmative defenses as set forth herein, as follows:

1. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 1 of the Amended Complaint.
2. Defendant admits the allegations contained in Paragraph 2 of the Amended Complaint.
3. Defendant admits the allegations contained in Paragraph 3 of the Amended Complaint.
4. Defendant admits that the damages alleged in the Amended Complaint exceed the amount in controversy requirement under 28 U.S.C. § 1332(a), and that the Plaintiff and Defendant in this lawsuit are citizens of different States.

5. Defendant admits the allegations contained in Paragraph 5 of the Amended Complaint.

6. To the extent that Paragraph 6 of the Amended Complaint calls for a legal conclusion, no response is required. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in the first sentence of Paragraph 6 of the Amended Complaint. Defendant admits the remaining allegations contained in Paragraph 6 of the Amended Complaint.

7. Defendant admits the allegations contained in Paragraph 7 of the Amended Complaint.

8. To the extent that Paragraph 8 of the Amended Complaint calls for a legal conclusion, no response is required. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 8 of the Amended Complaint.

9. Paragraph 9 of the Amended Complaint purports to contain excerpts of the documents referred to in the Amended Complaint as the "Leases." Because these documents speak for themselves, no further response is required and Southwest respectfully refers the Court to the Leases for their true and accurate contents.

10. Paragraph 10 of the Amended Complaint purports to contain excerpts of the Leases. Because these documents speak for themselves, no further response is required and Southwest respectfully refers the Court to the Leases for their true and accurate contents.

11. To the extent that Paragraph 11 of the Amended Complaint calls for a legal conclusion, no response is required. Paragraph 11 of the Amended Complaint purports to contain excerpts of the Leases. Because these documents speak for themselves, no further

response is required and Southwest respectfully refers the Court to the Leases for their true and accurate contents.

12. To the extent that Paragraph 12 of the Amended Complaint calls for a legal conclusion, no response is required. Paragraph 12 of the Amended Complaint purports to characterize a term of the Leases. Because these documents speak for themselves, no further response is required and Southwest respectfully refers the Court to the Leases for their true and accurate contents.

13. To the extent that Paragraph 13 of the Amended Complaint calls for a legal conclusion, no response is required. Paragraph 13 of the Amended Complaint purports to contain excerpts of the Leases. Because these documents speak for themselves, no further response is required and Southwest respectfully refers the Court to the Leases for their true and accurate contents.

14. To the extent that Paragraph 14 of the Amended Complaint calls for a legal conclusion, no response is required. Paragraph 14 of the Amended Complaint purports to contain excerpts of the Leases. Because these documents speak for themselves, no further response is required and Southwest respectfully refers the Court to the Leases for their true and accurate contents.

15. To the extent that Paragraph 15 of the Amended Complaint calls for a legal conclusion, no response is required. Paragraph 15 of the Amended Complaint purports to contain excerpts of the Leases. Because these documents speak for themselves, no further response is required and Southwest respectfully refers the Court to the Leases for their true and accurate contents.

16. To the extent that Paragraph 16 of the Amended Complaint calls for a legal conclusion, no response is required. Paragraph 16 of the Amended Complaint purports to contain excerpts of the Leases. Because these documents speak for themselves, no further response is required and Southwest respectfully refers the Court to the Leases for their true and accurate contents.

17. Paragraph 17 of the Amended Complaint purports to contain excerpts of the Leases. Because these documents speak for themselves, no further response is required and Southwest respectfully refers the Court to the Leases for their true and accurate contents.

18. Paragraph 18 of the Amended Complaint purports to contain excerpts of the Leases. Because these documents speak for themselves, no further response is required and Southwest respectfully refers the Court to the Leases for their true and accurate contents.

19. To the extent that Paragraph 19 of the Amended Complaint calls for a legal conclusion, no response is required. Defendant denies the remaining allegations contained in Paragraph 19 of the Amended Complaint.

20. To the extent that Paragraph 20 of the Amended Complaint calls for a legal conclusion, no response is required. Defendant denies the remaining allegations contained in Paragraph 20 of the Amended Complaint.

21. To the extent that Paragraph 21 of the Amended Complaint calls for a legal conclusion, no response is required. Defendant denies the remaining allegations contained in Paragraph 21 of the Amended Complaint.

22. To the extent that Paragraph 22 of the Amended Complaint calls for a legal conclusion, no response is required. Defendant denies knowledge or information sufficient to

form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 22 of the Amended Complaint.

23. To the extent that Paragraph 23 of the Amended Complaint calls for a legal conclusion, no response is required. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 23 of the Amended Complaint.

24. To the extent that Paragraph 24 of the Amended Complaint calls for a legal conclusion, no response is required. Defendant denies the remaining allegations contained in the first sentence of Paragraph 24 of the Amended Complaint. Defendant denies knowledge or information sufficient to a form a belief as to the truth or falsity of the remaining allegations contained in the second sentence of Paragraph 24 of the Amended Complaint.

25. To the extent that Paragraph 25 of the Amended Complaint calls for a legal conclusion, no response is required. Defendant denies the remaining allegations contained in Paragraph 25 of the Amended Complaint.

26. To the extent that Paragraph 26 of the Amended Complaint calls for a legal conclusion, no response is required. Defendant denies the remaining allegations contained in Paragraph 26 of the Amended Complaint.

27. To the extent that Paragraph 27 of the Amended Complaint calls for a legal conclusion, no response is required. Defendant denies the remaining allegations contained in Paragraph 27 of the Amended Complaint.

28. To the extent that Paragraph 28 of the Amended Complaint calls for a legal conclusion, no response is required. Defendant denies the remaining allegations contained in Paragraph 28 of the Amended Complaint.

29. To the extent that Paragraph 29 of the Amended Complaint calls for a legal conclusion, no response is required. Defendant denies the remaining allegations contained in Paragraph 29 of the Amended Complaint.

30. To the extent that Paragraph 30 of the Amended Complaint calls for a legal conclusion, no response is required. Defendant denies the remaining allegations contained in Paragraph 30 of the Amended Complaint.

31. To the extent that Paragraph 31 of the Amended Complaint calls for a legal conclusion, no response is required. Defendant denies the remaining allegations contained in Paragraph 31 of the Amended Complaint.

32. To the extent that Paragraph 32 of the Amended Complaint calls for a legal conclusion, no response is required. Defendant denies the remaining allegations contained in Paragraph 32 of the Amended Complaint.

33. To the extent that Paragraph 33 of the Amended Complaint calls for a legal conclusion, no response is required. Defendant denies knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 33 of the Amended Complaint.

COUNT 1 – BREACH OF CONTRACT

34. Defendant incorporates by reference herein its responses to Paragraphs 1 through 33 of the Amended Complaint.

35. To the extent that Paragraph 35 of the Amended Complaint calls for a legal conclusion, no response is required. Defendant denies the remaining allegations contained in Paragraph 35 of the Amended Complaint.

36. To the extent that Paragraph 36 of the Amended Complaint calls for a legal conclusion, no response is required. Defendant denies the remaining allegations contained in Paragraph 36 of the Amended Complaint.

RELIEF REQUESTED

Defendant denies that U.S. Bank is entitled to any of the relief requested or to any other relief.

AFFIRMATIVE DEFENSES

Without assuming the burden of proof where it would not otherwise be placed on Defendant, Southwest states the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

The Amended Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claim is barred in whole or in part by waiver, equity, laches, estoppel, release, or accord and satisfaction, or all of them.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claim is barred because Plaintiff would be unjustly enriched if it is allowed to recover any part of the damages alleged in Plaintiff's Amended Complaint.

FOURTH AFFIRMATIVE DEFENSE

Defendant performed its obligations under the Leases in full.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff has failed to establish any cognizable damages.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claim is precluded by documentary evidence, including the Leases.

SEVENTH AFFIRMATIVE DEFENSE

Defendant denies all averments not admitted specifically.

EIGHTH AFFIRMATIVE DEFENSE

Defendant asserts any and all other affirmative defenses as may be appropriate as the facts in this matter may show and moreover reserves the right to assert such other affirmative defenses to the Amended Complaint as may be applicable.

WHEREFORE, Southwest respectfully prays that this Court:

- A. Enter judgment against Plaintiff and in favor of Defendant;
- B. Dismiss the Amended Complaint in its entirety with prejudice;
- C. Decline to award the relief requested by the Amended Complaint;
- D. Award Defendant costs, expenses and attorneys' fees incurred in defense of the Amended Complaint; and
- E. Grant Defendant such additional relief as this Court deems just and proper.

Dated: New York, New York
April 18, 2008

COHEN & GRESSER LLP

By: /s/
Mark S. Cohen (MC 9055)
Michael Tremonte (MT 5996)
Oliver S. Haker (OH 6343)
100 Park Avenue, 23rd Floor
New York, New York 10017
(212) 957-7600
mcohen@cohengresser.com
mtremonte@cohengresser.com
ohaker@cohengresser.com

Attorneys for Defendant Southwest Airlines Co.